

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: TODD LOWELL STENMARK,  
MELYNDA KAYE STENMARK,

BKY. No.: 04-42235  
Chapter 13

Debtors.

**NOTICE OF HEARING AND**  
**MOTION FOR RELIEF**  
**FROM AUTOMATIC STAY**

-----  
TO: TODD LOWELL STENMARK, MELYNDA KAYE STENMARK AND  
THEIR ATTORNEY, CURTIS K. WALKER, ATTORNEY AT LAW,  
4356 NICOLLET AVE. S., MINNEAPOLIS, MN 55409.

1. Mortgage Electronic Registration Systems, Inc., its successors and assigns,  
as nominee for Household Finance Corporation, its successors and assigns, by its  
undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested  
below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004 at 2:00  
P.M. in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth  
Street, in Minneapolis, Minnesota, or as soon as counsel may be heard before The  
Honorable Robert J. Kressel, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later October  
8, 2004, which is three days before the time set for the hearing (excluding Saturdays,  
Sundays and holidays), or filed and served by mail not later than October 4, 2004, which  
is seven days before the time set for the hearing (excluding Saturdays, Sundays and  
holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED,  
THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 21, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the proposed Chapter 13 Plan, which was denied confirmation on September 16, 2004, the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtors are in default on said payments from May 1, 2004 to date in the amount of \$1,476.10, plus post-petition late charges and inspection fees.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., its

successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 15, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(F0412)

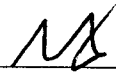
**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

# VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 15, 2004

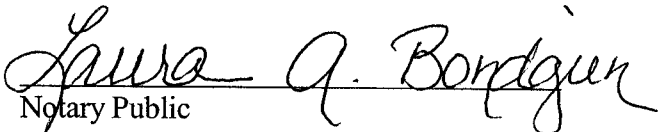
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

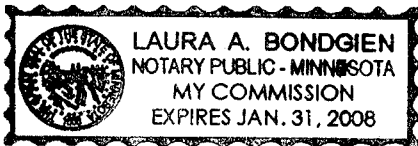
By:   
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

15th day of September, 2004.

  
Notary Public



8-21-01  
Treas. Receipt No. 1282  
Registration Tax  
hereon of \$ 398.76 paid  
Sharon Euerley  
County Treasurer

Countersigned:  
Dulene Hoshue  
County Auditor

OFFICE OF COUNTY RECORDER  
MEEKER COUNTY MINNESOTA  
I HEREBY CERTIFY THAT

298931

THIS INSTRUMENT #  
WAS FILED/RECORDED IN THIS OFFICE FOR RECORD  
ON THE 23 DAY OF Aug A.D. 20 01  
AT 8:30 O'CLOCK A M.  
Elaine Lenhard  
ELAINE LENHARD, COUNTY RECORDER  
FEE \_\_\_\_\_ WELL CERT. \_\_\_\_\_

## MORTGAGE

HMS 4597054

After Recording Return To:  
LENDSOURCE, INC.  
5125 COUNTY ROAD 101, SUITE 300  
MINNETONKA, MINNESOTA 55345  
Loan Number: 00-1366

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated AUGUST 15, 2001, together with all Riders to this document.  
(B) "Borrower" is TODD L. STENMARK AND MELYNDA K. STENMARK, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

- (C) "Lender" is LENDSOURCE, INC.

Lender is a CORPORATION organized  
and existing under the laws of MINNESOTA  
Lender's address is 5125 COUNTY ROAD 101, SUITE 300, MINNETONKA, MINNESOTA 55345

Lender is the mortgagee under this Security Instrument.

- (D) "Note" means the promissory note signed by Borrower and dated AUGUST 15, 2001. The Note states that Borrower owes Lender ONE HUNDRED SEVENTY THREE THOUSAND THREE HUNDRED SEVENTY FIVE AND 00/100 Dollars (U.S. \$ 173,375.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 1, 2031

- (E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

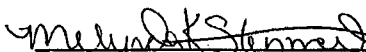
- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

- (G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

24. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.  
25. **Interest on Advances.** The interest rate on advances made by Lender under this Security Instrument shall not exceed the maximum rate allowed by Applicable Law.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

 (Seal)  
TODD L. STENMARK -Borrower

 (Seal)  
MELYNDA K. STENMARK -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

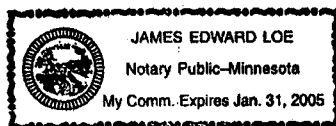
\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

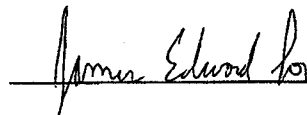
Witness:

Witness:

State of Minnesota,  
County of ~~MECKER~~ Wright

The instrument was acknowledged before me on \_\_\_\_\_ by  
TODD L. STENMARK AND MELYNDA K. STENMARK, HUSBAND AND WIFE



 Notary Public

My commission expires:

That part of the W1/2 of SW1/4, Section 4, Township 119, Range 29, Mecker County, Minnesota, described as follows: Commencing at the southeast corner of said W1/2 of SW1/4; thence westerly along the south line thereof a distance of 390.00 feet; thence northerly deflecting to the right 117°36'00", a distance of 369.85 feet to the point of beginning of the tract to be described; thence westerly deflecting to the left 87°36'00", a distance of 581.65 feet; thence southerly deflecting to the left 90°00'00", a distance of 369.53 feet to the south line of said W1/2 of SW1/4; thence westerly along the south line thereof, a distance of 337.28 feet to the southwest corner of said W1/2 of SW1/4; thence northerly along the west line thereof to the north line of the South 649.52 feet of said W1/2 of SW1/4; thence easterly parallel with the south line of said W1/2 of SW1/4; a distance of 1326.37 feet to the east line of said W1/2 of SW1/4; thence southerly along said east line, a distance of 280.00 feet to the point of intersection with a line running easterly from the point of beginning and parallel with the south line of said W1/2 of SW1/4; thence westerly to the point of beginning, AND ALSO AN EASEMENT for ingress and egress purposes only, over and upon a 33 foot wide strip described as follows: Beginning at a point on the south boundary line of said SW1/4 of SW1/4 390 feet west of the southeast corner of the SW1/4 of SW1/4 of Section 4, Township 119N, Range 29W; thence deflect 87°36' right a distance of 369.85 feet; thence deflect 87°36' left a distance of 33 feet; thence deflect 92°24' left a distance of 369.85 feet; thence deflect 87°36' left a distance of 33 feet to the point of beginning. SUBJECT TO AN EASEMENT as described in Book 666 of Deeds, pages 369-370.

per call  
from Jim Lee

OFFICE OF COUNTY RECORDER  
MEEKER COUNTY, MINNESOTA

DOCUMENT # A 303280  
FILED FOR RECORD THIS 4  
DAY OF March, 2002  
AT 8 O'CLOCK A.M.

Elaine Lenhard  
ELAINE LENHARD, COUNTY RECORDER

FEE \_\_\_\_\_ WELL CERT \_\_\_\_\_

HMS

4599056 CORPORATION ASSIGNMENT OF MORTGAGE  
FOR VALUE RECEIVED, the undersigned ("Assignor") hereby sells, transfers and assigns to  
\* SEE ATTACHED ADDENDUM ("Assignee")  
all of Assignor's right, title and interest in and to that certain Mortgage dated AUGUST 15, 2001  
executed by TODD L. STENMARK AND MELYNDA K. STENMARK, HUSBAND AND WIFE  
to LENDSOURCE, INC., A MINNESOTA CORPORATION, as mortgagor,  
and recorded concurrently herewith as Document Number 298931 (or in Book \_\_\_\_\_, as mortgagee,  
of \_\_\_\_\_ Page \_\_\_\_\_), in the Official Records of either the County  
Recorder or the Registrar of Titles, as the case may be, of MEEKER County,  
MINNESOTA, describing land therein as:  
~~LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT~~  
"A".  
A.P.N.: 07.0060.002/07.0061.000

TOGETHER with the note or notes therein described or referred to, the money due and to become due  
thereon with interest, and all other rights accrued or to accrue under said Mortgage.

DATE AUGUST 15, 2001  
STATE OF MINNESOTA  
COUNTY OF Hennepin

On AUGUST 15, 2001 before me,  
Traci M. Franko Notary Public, personally appeared  
Peggy Merkes, Vice President

LENSOURCE, INC., A MINNESOTA  
CORPORATION

Peggy Merkes  
Peggy Merkes  
Vice President

personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument, the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Traci M. Franko

DRAWN AND PREPARED BY:  
LENSOURCE, INC. /Traci Franko  
5125 COUNTRY ROAD

ADDENDUM

\*  
Mortgage Electronic Registration Systems, Inc., its successors and  
assigns, as nominee for Household Finance Corporation, its  
successors and assigns, G4318 Miller Rd., P.O. Box 2026, Flint, MI 48501-2026  
(assignee)

Mers#: 1000460-000 4599056-5  
Ph#: 1-888-679-6377

PREPARED BY:  
DEVIKA BUSTILLOS  
577 LAMONT RD.  
ELMHURST, IL 60126  
630-817-7000

DB  
(B)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: TODD LOWELL STENMARK,  
MELYNDA KAYE STENMARK,

BKY. No.: 04-42235  
Chapter 13

Debtors.

**AFFIDAVIT OF MOVANT'S**  
**VICE PRESIDENT**

-----  
STATE OF MINNESOTA )

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc., in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtors.

2. That pursuant to the proposed Chapter 13 Plan, which was denied confirmation on September 16, 2004, the Debtors were to make all current monthly payments due on said mortgage outside of the plan.


3. That to date, the Debtors are in default on said payments from May 1, 2004 to date in the amount of \$1,476.10, plus post-petition late charges and inspection fees.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.



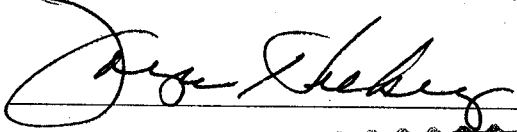
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

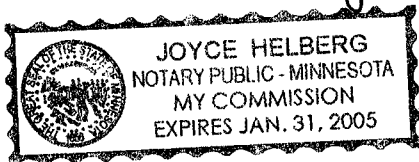
Dated: September 15, 2004

By:   
Scott Barnes  
Vice President  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Subscribed to and sworn before me this

15th day of September, 2004.





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: TODD LOWELL STENMARK,  
MELYNDA KAYE STENMARK,

BKY. No.: 04-42235  
Chapter 13

Debtors.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

-----  
**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on April 21, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Meeker County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as on Exhibit A attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under said mortgage loan was approximately \$198,000.00. Pursuant to the proposed Chapter 13 Plan, which was denied confirmation on September 16, 2004, the Debtors were to make all current monthly payments due on said mortgage outside of the plan. The Debtors are in default on said payments from May 1, 2004 to date in the amount of \$1,476.10, plus post-petition late charges and inspection fees.

## II. Argument

### GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtors’ inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors’ offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 15, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(F0412)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: TODD LOWELL STENMARK,  
MELYNDA KAYE STENMARK,

BKY. No.: 04-42235  
Chapter 13

Debtors.  
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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on September 16, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Michael J. Farrell  
Trustee  
P.O. Box 519  
Barnesville, MN 56514

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Todd Lowell Stenmark  
Melynda Kaye Stenmark  
71094 CSAH 24  
Dassel, MN 55325

Curtis K. Walker  
Attorney at Law  
4356 Nicollet Ave. S.  
Minneapolis, MN 55409

John A. Hedback, Esq.  
2855 Anthony Lane S., Ste. 201  
St. Anthony, MN 55418

Household Financial Services, Inc.  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Wells Fargo Home Mortgage  
Correspondence X2501-01T  
1 Home Campus  
Des Moines, IA 50328-0001

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 16, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Attorney at Law  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(F0412)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----

In re: TODD LOWELL STENMARK,  
MELYNDA KAYE STENMARK,

BKY. No.: 04-42235  
Chapter 13

Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 14, 2004 in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Finance Corporation, its successors and assigns, was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

That part of the W ½ of SW ¼, Section 4, Township 119, Range 29, Meeker County, Minnesota, described as follows: Commencing at the southeast corner of said W ½ of SW ¼; thence westerly along the south line thereof a distance of 390.00 feet; thence northerly deflecting to the right 117°36'00", a distance of 369.85 feet to the point of beginning of the tract to be described; thence westerly deflecting to the left 87°36'00", a distance of 581.65 feet; thence southerly deflecting to the left 90°00'00", a distance of 369.53 feet to the south line of said W ½ of SW ¼; thence westerly along the south line thereof, a distance of 337.28 feet to the southwest corner of said W ½ of SW ¼; thence northerly along the west line thereof to the north line of the South 649.52 feet of said W ½ of SW ¼; thence easterly parallel with the south line of said W ½ of

SW ¼; a distance of 1326.37 feet to the east line of said W ½ of SW ¼; thence southerly along said east line, a distance of 280.00 feet to the point of intersection with a line running easterly from the point of beginning and parallel with the south line of said W ½ of SW ¼; thence westerly to the point of beginning, AND ALSO AN EASEMENT for ingress and egress purposes only, over and upon a 33 foot wide strip described as follows: Beginning at a point on the south boundary line of said SW ¼ of SW ¼ 390 feet west of the southeast corner of the SW ¼ of SW ¼ of Section 4, Township 119N, Range 29W; thence deflect 87°36' right a distance of 369.85 feet; thence deflect 87°36' left a distance of 33 feet; thence deflect 92°24' left a distance of 369.85 feet; thence deflect 87°36' left a distance of 33 feet to the point of beginning. SUBJECT TO AN EASEMENT as described in Book 666 of Deeds, pages 369-370, Meeker County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Robert J. Kressel  
Judge of U.S. Bankruptcy Court